Supreme Court, U.S.
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No. 96-1304

In The

Supreme Court of the United States

October Term, 1996

KAREN KARCHER,

Petitioner,

vs.

EMERSON ELECTRIC COMPANY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the Eighth Circuit erred when it determined that Petitioner had failed at trial to demonstrate that Respondent acted with malice or reckless indifference to her federally protected rights such that an award of punitive damages under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, was improper.

RULE 29.6 STATEMENT

Respondent Emerson Electric Company, defendant below, has no parent corporation. Its nonwholly owned domestic subsidiaries are Vermont America Corporation and McGill Manufacturing Company.

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STATEMENT OF THE CASE

Petitioner Karen Karcher ("Petitioner" or "Karcher") filed a complaint on November 2, 1992, against her employer, Alco Controls ("Alco"), a division of Respondent Emerson Electric Company ("Emerson"), for alleged violations of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e-2000e-17 and the Missouri Human Rights Act ("MHRA"), Mo. Rev. Stat. § 213 *et seq.* In her complaint, Karcher alleged that she had been denied two promotions because of her sex and had been retaliated against for filing a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), in violation of Title VII and the MHRA.

Karcher had worked at Alco, a manufacturer of refrigeration parts, since 1976 and was still employed at Alco as of the date of trial. At the time of trial, Karcher was a Group 2 machine operator. Her husband, Jerry Karcher, also worked at Alco as a quality assurance supervisor.

Alco employed both machine operators and set-up workers in its machine shop. Those who "set up" the equipment initially prepared the stations and set up the tools within the machines so that the equipment would produce a specific part. The set-up person then maintained the tooling when the machine malfunctioned or the tooling became dull during operation. After the equipment was set up, the operator was responsible for actually operating the machine and maintaining the quality of the parts, while the set-up worker repaired any malfunctioning parts.

Alco's machine shop utilized several different types of machinery, including "bar feed" equipment and "automatic chucker" equipment. Both the bar feed and the automatic chucker machinery were manually set up. In 1988, Alco

purchased four new bar feed and automatic chucker machines, costing between $95,0000 and $98,000 each. The new equipment was operated in the same way as the old machinery, except that the new machines were set up through the use of computers while the old were still set up by hand.

When the new machinery was put into operation in 1988, pursuant to the requirements of its collective bargaining agreement, the company met with the union representing its workers to determine the job classification, pay rate and qualifications necessary to award the new set-up jobs for the equipment. The evidence at trial was undisputed that Alco and the union eventually agreed that set-up jobs on the new equipment would be classified as "Group 6 General Machine Shop Set-Up" [hereinafter "Group 6 Set-Up"]. The collective bargaining agreement also provided that when job openings at the facility were available, a listing would be posted, and "[t]he job opening will be filled with seniority being the deciding factor, where skill, ability and physical fitness of the employees' [sic] being considered are relatively equal." Six of seven witnesses at trial testified that the union and the company agreed that, at least after the first six months the new equipment was operating, the "skill and ability" required by the collective bargaining agreement for the set up jobs on the new equipment would be determined by prior set up experience on the machines being replaced.[1] The company and the union agreed that the senior bidder with prior set-up experience on the appropriate equipment would be awarded the position. No employees were trained for these positions and those who were awarded the positions were also required to manually set up the old machines, which were still in operation.

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1. The only witness who testified differently was Grady Scott, Karen Karcher's stepfather. Scott stated that it was his understanding that the agreement was that the new positions would be awarded based solely on seniority.

The evidence at trial was clear and uncontradicted that the agreement with the union was followed on twenty-six occasions between 1988 and 1994. The evidence was also undisputed that of the twenty-six Group 6 Set-Up awarded between 1988 and 1994, the successful bidder on twenty-five of those awards had set-up experience on analogous equipment at Alco.[2] The union's representative testified at trial that in awarding these twenty-six job bids, Emerson had never violated the collective bargaining agreement.

Karen Karcher twice bid on Group 6 Set-Up positions, although her only machine shop experience at Alco was working as an *operator*.[3] By her own admission, she had never held a set-up position. Karcher was denied both positions, as were male employees who had more seniority than Karcher but who also lacked set-up experience. Karcher admitted at trial that she told the company she should have been awarded the second job bid based solely on seniority. She also admitted at trial that the employees chosen for the two positions had set up experience, that she had never worked in a set up position and that the male employee awarded the 1992 Group 6 Set-Up position had better qualifications than she did.[4]

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2. Again, the only exception was Grady Scott, Karen Karcher's stepfather, who told the company that he had set up experience at this own machine shop.

3. Petitioner's contention in her Petition that she applied for Group 6 positions "on numerous occasions" in a misstatement. (Petition, at 2). The only alleged discriminatory denials of Group 6 Set-Up positions at issue in this case occurred in 1990 and 1992, *twice*, not "on numerous occasions."

4. Petitioner asserts that "in the six years *after* the prerequisite was established — up to the trial of this lawsuit — the company continued to exclude women from manual set up jobs, so none could become 'eligible' for a Group 6 set up promotion." (Petition, at 3). Contrary to Petitioner's (Cont'd)

After each denial of her bids for the Group 6 Set-Up positions, Karcher filed a grievance with her union. The union refused to process the first grievance to arbitration because of lack of merit. It also withdrew the second grievance. Karcher also filed charges of discrimination with the EEOC and the Missouri Commission on Human Rights ("MCHR") after the bid denials, alleging that she had been denied the positions because of a handicap and because of her sex.

Karcher also filed at least six workers' compensation claims for injuries she contended she received while working at Alco beginning on March 30, 1983 through January 10, 1994. Karcher admitted at trial that she attempted to discuss her workers' compensation claims and on-the-job injuries with her husband, Jerry Karcher, while he was employed at Alco as a quality assurance supervisor. Jerry Karcher testified at trial that his wife talked to him about her various claims against the company. He

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(Cont'd)
assertions, however, there was no evidence admitted at trial on the promotion or lack thereof of any woman, including Karcher, to manual set up positions below Group 6. In fact, all such evidence was specifically excluded by the trial court. Petitioner did not appeal the trial court's ruling but nevertheless argued on appeal this same theory, admitting that the evidence had been excluded. Emerson argued below that all such evidence was improperly before the court of appeals because Karcher had waived allegations of error in the trial court's ruling by failing to appeal it. The Eighth Circuit made no specific ruling on this issue but appears to have relied in part on this evidence in concluding that Emerson was not entitled to judgment as a matter of law: "[T]he jury heard evidence from which it could have inferred discriminatory intent on Emerson's part. For example, more than six years after Emerson adopted procedures to choose people for this job, it still had not given any women the experience necessary to qualify her for the job." (Appendix to Petition for Writ of Certiorari [hereinafter "Pet. App."], at A-9). This evidence was not admitted at trial, was not before the jury, was not properly before the court of appeals and is not properly before this Court. *See Nolte v. Pearson*, 994 F.2d 1311, 1314 (8th Cir. 1993); *United States v. Warden*, 676 F.2d 252 (7th Cir. 1982).

also testified that he attended monthly supervisor's meetings, at which status reports were presented regarding pending workers' compensation claims and grievances, including those of his wife. Other witnesses testified at trial that the information discussed at these meetings included the company's position on Karcher's grievances, the amount of money available for particular workers' compensation injuries, the possibility of settlement for workers' compensation injuries, and the company's position with respect to individual charges pending before the EEOC or MCHR.

In early 1990, after Karen Karcher applied for a job in the quality assurance department, Jerry Karcher told his superiors that if his wife were awarded the job, there would be a conflict and he would leave the company. Jerry Karcher also told them that if there ever was a conflict of interest with his wife's position and his own, he would resign. When Karen Karcher was told during her testing for the position that her husband would leave the company if she were awarded the position, she left the test without completing it and was no longer considered for the job. In 1989, Jerry Karcher began looking for another job because he believed he was not being paid enough for the hours he was working.

In early December of 1991, Karen Karcher learned that a Group 6 Set-Up position would become available because her stepfather, Grady Scott, who had been awarded the position, told her he was retiring. Karcher then attempted to contact the president of Alco about the potential job opening by going to his office and asking to speak with him. Karcher was told to go through the appropriate channels to bid for the position.

On December 9, 1991, Jerry Karcher's superiors held a meeting with him at which they told him about his wife's attempt

to meet with the president. They also stated that they believed a serious conflict of interest had developed and that they would take him up on his previous offer to resign from the company when a conflict of interest arose. They told him that he should take the next sixty days to begin looking for another job and that the company would help him with his job search. Jerry Karcher was not told he was being terminated and, at a later meeting, he was specifically told he was not being forced to resign. Jerry Karcher did not find another job within sixty days, but continued to work at Alco. In July of 1992, eight months after the meeting, Jerry Karcher was offered a job at another company for a higher salary and left Alco at that time to take the position.

In January of 1994, Karen Karcher was issued a disciplinary warning for falsifying company records when she signed a company bingo game sheet which stated that she had not had any work-related injuries in the prior game round. Karcher grieved the discipline and it was ultimately removed from her file.

While still employed at Alco, in November of 1992, Karcher filed a lawsuit against Emerson, alleging that she had been discriminated against because of her sex and handicap and retaliated against for complaining of discrimination. After amending her complaint three times, Karcher ultimately alleged that Emerson had discriminated against her on the basis of her sex by twice failing to promote her to the Group 6 Set-Up position and had retaliated against her for filing a charge of discrimination by issuing her the discipline for the bingo game and by telling her husband to find another job. The case proceeded to trial on Karcher's two claims of disparate treatment and two claims of retaliation.[5] The jury returned a verdict for

5. Karcher's Title VII claim of promotion denial in 1990 was tried to the court; her other claims under Title VII and the MHRA were tried to a jury.

Karcher on each of her claims. It awarded her $25,000 for lost wages and benefits, $150,000 in emotional damages and $350,000 in punitive damages. The trial court denied Emerson's motion for judgment notwithstanding the verdict, for a new trial and/or to alter or amend judgment.

The Eighth Circuit Court of Appeals upheld the jury's award for lost wages, benefits and compensatory damages, even though it also concluded that the trial court's instructions to the jury were erroneous. It also held that Karcher had not proven that Emerson acted with malice or reckless indifference to her rights, the standard for the award of punitive damages under Title VII, or that Emerson's conduct was outrageous, the standard for the award of punitive damages under the MHRA. It set aside the jury's award of $350,000 in punitive damages. (Pet. App. A-13).

REASONS FOR DENYING THE WRIT

In her petition, Karcher urges this Court to abandon long established and well-settled principles regarding the imposition of punitive damages and to ignore the plain language of the 1991 amendments to Title VII. Petitioner's assertions that there is confusion in the lower courts about the proper punitive damage standard to apply in Title VII cases is untenable, as is her novel and legally unsupportable proposition that a district court should have no discretion in submitting the issue of punitive damages to the jury once it has determined that the defendant is not entitled to judgment as a matter of law. Quite simply, there is nothing about this case in the Petition which merits review by this Court, either because of disagreement among the circuit courts of appeals or because an important issue of federal law needs to be resolved.

Contrary to Petitioner's contentions, there is no dispute among the circuit courts of appeals on the standard necessary

for the imposition of punitive damages in disparate treatment claims under Title VII. The federal appellate courts, including the court below in this case, have applied the same uniform standard for the imposition of such damages; that is, the standard set forth in the 1991 amendments to Title VII: punitive damages may be awarded "if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved employee." 42 U.S.C. § 1981a(b)(1). *See Kimzey v. Wal-Mart Stores, Inc.*, __ F.3d __, 1997 WL 68196 (8th Cir. Feb. 20, 1997); *Merriweather v. Family Dollar Stores of Indiana*, 103 F.3d 576 (7th Cir. 1996); *Emmel v. Coca-Cola Bottling Co. of Chicago*, 95 F.3d 627, 636 (7th Cir. 1996); *Varner v. National Super Markets, Inc.*, 94 F.3d 1209, 1214 (8th Cir. 1996); *Ortiz v. John O. Butler Co.*, 94 F.3d 1121, 1126 (7th Cir. 1996); *Turic v. Holland Hospitality, Inc.*, 85 F.3d 1211 (6th Cir. 1995); *McKinnon v. Kwong Wah Restaurant*, 83 F.3d 498, 506 (1st Cir. 1996); *Hennessy v. Penril Datacomm Networks, Inc.*, 69 F.3d 1344, 1355 (7th Cir. 1995); *Beardsley v. Webb*, 30 F.3d 524, 530 (4th Cir. 1994).

Petitioner contends that some courts require an "extra showing," aside from evidence of intent to discriminate, to submit a punitive damage case to a jury on the grounds of malice or reckless indifference, while others do not. She can point to only one case, however, *Merriweather*, as evidence of disagreement among the courts of appeals in Title VII cases on this issue. In fact, *Merriweather* was a bench trial and did not involve the imposition of punitive damages by a jury. 103 F.3d at 576. The court decided punitive damages were appropriate because the trial court as a factfinder concluded that the defendant's conduct exhibited "reckless indifference" to the plaintiff's civil rights. *Id.* at 581. Although the court stated in dicta that "evidence that suffices to establish an intentional

violation *may* also suffice to permit the [factfinder] to award punitive damages," this statement was made in response to the defendant's argument that *direct* evidence of knowledge of the violation of the plaintiff's rights was necessary to impose punitive damages. *Id.* at 581 (emphasis added). The court did not hold that *all* findings of intentional discrimination were the equivalent of reckless or malicious conduct, or that the trial court *must* permit the jury to determine if punitive damages should be imposed in all cases in which judgment as a matter of law has been denied, as Petitioner contends. Nor did it state that "the standard for punitive damages in Title VII cases is the same as the underlying standard for liability," as Petitioner also argues. (Petition, at 11). It merely held that direct evidence of knowledge of the violation of rights is *not* necessary and that, in some cases, the same evidence which establishes liability *may* also establish reckless disregard for the plaintiff's rights. *Merriweather* is thus not fundamentally at odds with the other federal courts which have held that maliciousness or reckless conduct requires more than a showing of intentional discrimination.

The crux of Petitioner's argument is that intentional discrimination is *per se* malicious or reckless conduct under Title VII. Such a proposition finds no support in *any* federal case law or in the statute and is certainly not an important and unresolved question of federal law that this Court need resolve. The 1991 amendments to Title VII permit the award of both compensatory and punitive damages, but differentiate between them. Compensatory damages may be awarded "against a respondent who engages in unlawful intentional discrimination," 42 U.S.C. § 1981a(a)(1), but punitive damages may be awarded only if "the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual." 42 U.S.C. § 1981a(b)(1). Clearly, the drafters of the amendment did not

equate *all* intentional discrimination with malicious or reckless behavior. Nor did they intend to provide punitive damages for all intentional discrimination. Had they so intended, the statute would have stated that punitive damages were available for intentional discrimination and would *not* have restricted recovery to cases where the complaining party demonstrated malicious or reckless behavior. Presumably, Congress said what it meant and meant what it said. Petitioner's argument is belied by the very statute under which she sought relief. This Court need look no further than the plain language of the statute to see the fallacy in Petitioner's position.

Even if it were necessary to examine the legislative history of the 1991 amendments, that history makes clear that the statute requires a higher standard of culpability for the award of punitive damages than that required for the award of compensatory damages. The House of Representatives Committee on the Judiciary's Majority Report stated that the intent of the amendment was to provide "victims of intentional discrimination the right to recover compensatory damages, and, *in egregious cases*, punitive damages as well." H.R. Rep. No. 40, 102nd Cong., 1st Sess., pt. 2, at 3 (1991) (emphasis added). The House Report also stated, "Plaintiffs must first prove intentional discrimination, then must prove actual injury or loss arising therefrom to recover compensatory damages, and *must meet an even higher standard* (establishing that the employer acted with malice or reckless or callous indifference to their rights) to recover punitive damages." H.R. Rep. No. 40(I), 102nd Cong., 1st Sess. at 72 (1991) (emphasis added). This "higher standard" is the one utilized by *all* federal courts on this issue, including the court below.

Indeed, in this country, a showing of egregious behavior — whether it is termed "malice," "willfulness," "wantonness" or "recklessness" — has traditionally been required under the

common law to impose punitive damages, even for intentional torts, for over one hundred years. *See Smith v. Wade,* 461 U.S. 30, 38-48 (1983), and cases cited therein. In *Philadelphia, W. & B. R. Co. v. Quigley,* 62 U.S. (21 How.) 202, 214 (1858), this Court noted:

> Whenever the injury complained of has been inflicted maliciously or wantonly, and with circumstances of contumely or indignation, the jury are not limited to the ascertainment of a simple compensation for the wrong committed against the aggrieved person. But the malice spoken of in this rule is not merely the doing of an unlawful or injurious act.

See also Restatement (Second) of Torts § 908(2) (1977) ("Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others"). Petitioner offers no valid reason to depart from his long-standing rule.

As support for her argument, Petitioner relies on statements in the legislative history of the 1991 amendments that the standard for the imposition of punitive damages under Section 1981a was meant to be that set forth by this Court in *Smith v. Wade,* 461 U.S. 30 (1983), for punitive damages under 42 U.S.C. § 1983. Nothing in this Court's holding in *Smith,* however, demonstrates that punitive damages may be imposed under the 1991 amendments for anything other than reckless or malicious conduct. In *Smith,* the underlying liability was premised on reckless conduct — "gross negligence" or "egregious failure to protect" the plaintiff — because the plaintiff's action was a Section 1983 claim against a public official and because qualified immunity was applicable. 461 U.S. at 32. The Court simply held that no further showing, aside from the "reckless or callous

disregard for the plaintiff's rights" was necessary for a finding of underlying liability. *Id.* at 51. The Court also noted, however, that "it is not entirely accurate that punitive and compensatory damages were awarded in this case on the same standard." *Id.* at 52.

In Title VII cases, however, because no issues of qualified immunity normally are present, underlying liability is not established by "reckless or callous disregard for the plaintiff's rights." Rather that liability is premised on intentional discrimination. The reckless or malicious conduct required in *Smith* for Section 1983 claims is a higher standard that the imposition of underlying liability in Title VII claims. Applying the *Smith* standard to Title VII claims for punitive damages still requires a showing of reckless or malicious behavior, as clearly the drafters of the 1991 amendments intended. This punitive damage standard in Title VII cases is the same as that in *Smith,* but because the underlying liability standard is not the same, but lower in Title VII cases, a showing of recklessness or maliciousness requires more in a Title VII case than a showing of the underlying liability. Thus, there is no inconsistency between the statute's tracking of the "reckless disregard" language of *Smith* with the notion that punitive damages under Title VII require more than proof of intentional discrimination.

Petitioner's argument that a finding of a violation of Title VII is the legal equivalent of malicious or reckless conduct is unsupportable. Equally unsupportable are her contentions that once the trial court denies a motion for judgment as a matter of law, it *must* submit the issue of punitive damages to the jury and that jury's award is unreviewable unless it is so grossly excessive that it violates the standards of constitutional due process set forth by this Court in *BMW of North America, Inc. v. Gore,* __ U.S. __, 116 S. Ct. 1589 (1996). (*See* Petition, at 15). Petitioner

can cite to no legal authority, aside from erroneous reliance on *Merriweather,* for this novel proposition and, indeed, there is none. Petitioner would have this Court take away the trial court's discretionary ability to determine if a factual issue exists for jury resolution.[6] Not a single case cited by Petitioner, including *Merriweather* and *Smith,* stands for this proposition. In *Smith,* this Court at least implied that the trial court must make an initial determination that a question of fact exists as to whether the evidence demonstrates a reckless or callous disregard for the plaintiff's rights "sufficient to trigger a jury's consideration of the appropriateness of punitive damages." 461 U.S. at 50. And, like the petitioner's argument in *Smith,* Karcher's argument "overlooks a key feature of punitive damages — that they are never awarded as of right, no matter how egregious the defendant's conduct." *Id.* at 52.

Petitioner's argument is also premised on the faulty notion that there are no different degrees of culpability in disparate treatment cases, that is, that one instance of disparate treatment can be no more egregious than another. Petitioner would have all acts of disparate treatment by their nature deemed malicious and reckless, thus making the imposition of punitive damages appropriate in *all* cases of discrimination. (Petition, at 11). According to Petitioner's theory, quid pro quo sexual harassment would be no more malicious than the denial of a promotion. Also under her theory, a hostile working environment in which an employee is subjected to daily and repeated verbal abuse, threats, intimidation or unwanted physical conduct is no more culpable than an employee being disciplined and having that discipline later removed from the personnel file. Similarly, a

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6. Because trial courts have the discretion to determine initially whether there is sufficient evidence to go to a jury on underlying liability, there is no cogent reason they should not have the same ability to determine whether the standards necessary for the possible imposition of punitive damages have been met.

corporate policy which specifically states that a company prefers to hire younger workers and the implementation of that policy throughout the country would be no more egregious than a refusal to transfer one employee based on age. Such a theory flies in the face of the language of the statute itself, its legislative history and case law interpreting it.

In fact, this Court has long recognized that there *are* differences in degrees of culpability. *Smith*, 461 U.S. at 37-48; *Gore*, __ U.S. at __, 116 S. Ct. at 1598-99. In *Gore*, this Court held that one of the factors to be considered in determining the appropriateness of punitive damages for constitutional purposes was the degree of reprehensibility of the defendant's conduct. *Id.* Similarly, the federal courts of appeals, within the framework of Title VII, have developed guidelines — a "hierarchy of possible civil rights violations" — to determine what conduct indicates malice or reckless disregard for the rights of an employee and what does not. *Emmel*, 95 F.3d at 637. For example, the courts have held that corporate management's knowledge of or participation in harassment or disparate treatment is a determining factor in analyzing whether the defendant had the requisite malicious intent to discriminate. *Splunge v. Shoney's Inc.*, 97 F.3d 488, 490 (11th Cir. 1996) (no showing that the corporate hierarchy actually knew of lower level employee's harassment of another justified no award of punitive damages); *Emmel*, 95 F.3d at 636 (owner's policy of discriminating against women in upper management positions justified imposition of punitive damages); *cf. Patterson v. P.H.P. Healthcare Corp.*, 90 F.3d 927, 943 (5th Cir. 1996) (discriminatory acts of lower level employee not imputed to defendant employer for purposes of imposition of punitive damages under 42 U.S.C. § 1981). Courts have also held that quid pro quo sexual harassment is by its nature more egregious than other types of disparate treatment. *Hennessy*, 69 F.3d at 1355; *Emmel*, 95 F.3d at 637. They have also held that a

defendant's good faith belief that it was justified in disciplining an employee did not demonstrate that the defendant's state of mind was malicious or that its actions were taken in reckless indifference to the plaintiff's federally protected rights. *Ortiz*, 94 F.3d at 1126. Petitioner's theory that one act of discrimination is the same as another is one clearly rejected by the federal appellate courts.

These cases also demonstrate unequivocally that there is neither confusion nor disagreement in the federal courts of appeals on the issue of the appropriate standard to apply to claims for punitive damages under Title VII. The availability of punitive damages is determined on a case-by-case basis, but there are clearly parameters for imposition of those damages, parameters the Eighth Circuit correctly applied in this case. The rampant chaos among the lower courts on this issue alleged by Petitioner simply does not exist. If, as Petitioner contends, the circuit courts of appeals are in disagreement over the correct punitive damage standard to apply in Section 1981 cases, this case, based on Title VII claims, is not an appropriate vehicle to review such standards or to clarify any misapplication that may exist.

In this case, the Eighth Circuit, as had every other federal appellate court before it, applied the standard set forth in the 1991 amendments to the Civil Rights Act to determine whether a submissible case for punitive damages had been established under both Title VII and the Missouri Human Rights Act. Emerson had denied Petitioner one job bid,[7] had issued her one disciplinary warning which was removed from her file and had

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7. Punitive damages could not as a matter of law under Title VII have been awarded on the job bid denial in 1990 because it occurred prior to the enactment of the 1991 amendments to Title VII. *Landgraf v. USI Film Products*, 511 U.S. 244 (1994).

told her husband that a conflict of interest had developed and that he should look for another job. The Eighth Circuit concluded, based on this less than egregious conduct, that Karcher failed to demonstrate the requisite malice or recklessness on the part of Emerson and also failed to demonstrate "outrageousness," as required by the MHRA. Contrary to Petitioner's assertions, the court did *not* hold that some additional evidence was necessary for the imposition of punitive damages; it merely held that the evidence at trial demonstrated no maliciousness or outrageousness in Emerson's conduct. The court of appeals' decision on the issue of punitive damages is totally compatible with the decisions of the federal courts of appeals issued both before and after its opinion, the plain language of the statute itself and the legislative history of the 1991 amendments to Title VII. Simply because Petitioner believes its analysis was too short does not justify this Court's review of its decision.

Moreover, at least part of the Eighth Circuit's rejection of the punitive damage award must necessarily have rested on its interpretation of Missouri law. The amount of punitive damages awarded by the jury — $350,000 — was well above the limitation placed on such damages by the 1991 amendments, particularly when added to the compensatory damages of $150,000 also awarded. 42 U.S.C. § 1981a(b)(3)(D). Missouri has not placed caps on compensatory and punitive recovery under the MHRA and thus the district court did not reduce the verdict, because it was premised on both federal and Missouri law. In fact, the jury was instructed on the standards for punitive damages under both Title VII and the MHRA. Consequently, any decision of the Eighth Circuit involved application not only of the Title VII standard for punitive damages, but also considered requirements under Missouri law for imposition of punitive damages. Should this Court decide that the issue of the punitive damage standard under Title VII needs clarification,

the Eighth Circuit's decision in this case is not the best choice for review, based as it was on state as well as federal law.

CONCLUSION

Petitioner has presented this Court with no cognizable reason to review the Eighth Circuit's decision. There is no confusion among the lower courts on the appropriate standard for imposition of punitive damages under Title VII and the Eighth Circuit followed that standard to the letter in this case. Nor is there an important question of federal law which needs this Court's clarification. The language of the statute and its legislative history amply demonstrate that a higher level of culpability is necessary for the imposition of punitive damages under the 1991 amendments to the Civil Rights Act than that necessary to award compensatory damages. Nothing in the Eighth Circuit's opinion is inconsistent with that view or warrants review by this Court.

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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